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BEFORE THE

# Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM Docket No. 93-94
SCRIPPS HOWARD	)	
BROADCASTING COMPANY	)	File No. BRCT-910603KX
	)	
For Renewal of License of	)	
WMAR-TV, Baltimore, Maryland	)	
	)	
and	)	
	)	
FOUR JACKS BROADCASTING, INC.	)	File No. BRCT-910903KE
	)	
For Construction Permit for a	)	
New Television Facility on	)	
on Channel 2 at	)	
Baltimore, Maryland	)	

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To: The Honorable Richard L. Sippel  
Administrative Law Judge

## OPPOSITION TO MOTION TO ENLARGE ISSUES AND TO REOPEN THE RECORD

Four Jacks Broadcasting, Inc. ("Four Jacks"), by its attorneys and pursuant to Sections 1.229 and 1.294(c) of the Commission's Rules, hereby opposes the "Motion to Enlarge Issues and to Reopen the Record" ("Motion") filed on December 9, 1993 by Scripps Howard Broadcasting Company ("Scripps Howard"). As set forth below, Scripps Howard has raised absolutely no question as to the candor of Four Jacks' integrated principals concerning their integration pledges in this case. Accordingly, Scripps Howard's Motion should be denied.<sup>1/</sup>

<sup>1/</sup> At the time of this filing, the United States Court of Appeals for the District of Columbia Circuit has just issued its decision in Bechtel v. FCC, No. 92-1378 (D.C. Cir. Dec. 17, 1993) ("Bechtel II"), ruling that the "integration"

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1. The integration pledges of Four Jacks principals David, Robert, and Frederick Smith have been "repeatedly expressed in their application and in written and oral testimony" (Motion at 1), and have remained unchanged since Four Jacks first filed its Channel 2 application. David, Robert, and Frederick Smith each pledge to work full-time (at least 40 hours per week) in the management of the Channel 2 facility. To carry out their commitments, each of the three has pledged to "resign from my then-current employment" and to "limit or terminate any other activities that might interfere with my integration commitment." Four Jacks Ex. 2 at 1; Ex. 3 at 1; Ex. 4 at 1. In addition, the principals of Four Jacks have proposed to divest all of their interests in and sever all connections with WBFF(TV), Baltimore, Maryland, in the event Four Jacks' Channel 2 application is granted. Four Jacks Ex. 1 at 1-2; Ex. 2 at 6; Ex. 3 at 6; Ex. 4 at 5-6. David, Robert, and Frederick Smith, however, have never proposed -- and do not now propose -- to give up their official positions with or dispose of their ownership interests in Sinclair Broadcast Group, Inc. ("SBG").

2. On December 2, 1993, SBG filed with the Securities and Exchange Commission ("SEC") an amendment to its S-1 Registration Statement. The December 2 amendment -- which was filed at the SEC's request -- made explicit to potential investors what David,

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criterion is arbitrary and capricious. Four Jacks herein addresses Scripps Howard's Motion on its merits. Four Jacks notes, however, that the court's decision in Bechtel II may well render irrelevant the factual matters that provide the basis for Scripps Howard's Motion.

Robert, and Frederick Smith have repeatedly made clear in this proceeding: (i) that each of the three will work at the Channel 2 station on a full-time basis in the event the Four Jacks application is granted; (ii) that none of the three proposes to resign as officer or director of SBG or to dispose of his ownership interests in that company should Four Jacks' application be granted; and (iii) that David, Robert, and Frederick Smith will each be able to perform his current duties with SBG while fulfilling his commitment to work full-time at Four Jacks' station. This same information was set forth in a December 6, 1993 Prospectus filed with the SEC.

3. Now, in a pleading that appears more retaliatory than substantive,<sup>2/</sup> Scripps Howard leaps from these December 1993 SEC filings to the conclusion that Four Jacks' integrated principals have somehow misrepresented facts or lacked candor in this proceeding regarding their integration pledges. There is absolutely no basis for Scripps Howard's contention.

4. To justify reopening the record and enlarging the issues, the petitioner must show:

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<sup>2/</sup> Almost from the day that Four Jacks filed its competing application for Channel 2 at Baltimore, Scripps Howard has demonstrated its proclivity for retaliatory filings against Four Jacks and its principals. See Four Jacks' Petition to Enlarge Issues Against Scripps Howard Broadcasting Company, filed May 13, 1993, at 24-27. Scripps Howard's instant Motion was filed one day after Four Jacks served on Scripps Howard a Motion to Reopen the Record and Enlarge Issues demonstrating patent misrepresentations by Scripps Howard concerning evidence critical to Scripps Howard's claimed renewal expectancy. This fact, combined with the total lack of merit in Scripps Howard's Motion, suggests that the Motion is nothing more than another Scripps Howard attempt at "tit for tat" motions practice.

(1) that it relies on new or newly discovered evidence that could not, through the exercise of due diligence, have been discovered earlier; (2) that the new evidence, if proven, would raise a substantial and material question of fact affecting the ultimate outcome of the proceeding; and (3) that there is a substantial likelihood of proving [the] potentially disqualifying allegations if the case is remanded for further hearings.

Eve Ackerman, 8 FCC Rcd 4205, 4205 (1993); see also Global Information Technologies, Inc., 8 FCC Rcd 6629, 6630 (Rev. Bd. 1993).

5. Scripps Howard's Motion meets none of these tests. First, SBG's December 1993 SEC filings, on which Scripps Howard relies, are not new evidence -- for the simple reason that those documents say nothing that Four Jacks' integrated principals have not made clear throughout the course of this proceeding.<sup>3/</sup> For one thing, had David, Robert, and Frederick Smith not intended to retain their official positions with and ownership interests in SBG, they would not have made a point, in their direct case testimony, of detailing the reasons why, "notwithstanding SBG's other media interests, [each principal is] able and committed to

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<sup>3/</sup> Moreover, from the earliest SBG S-1 filing, potential SBG investors have been put on notice that SBG's principals may undertake managerial responsibilities at other television stations SBG might obtain. The very first SBG Registration Statement, filed with the SEC on September 28, 1993, states that SBG's principals

are free to . . . acquire additional interests in television industry enterprises. . . . Such activities could present a conflict of interest with [SBG] in the allocation of management time and resources of executive officers. . . .

Scripps Howard Ex. 26 at 15.

carrying out [his] pledge to manage, on a full-time basis, a VHF television station in Baltimore, Maryland." Four Jacks Ex. 2 at 1-2; Ex. 3 at 1-2; Ex. 4 at 1-2 (emphasis added). Moreover, Scripps Howard obviously knows full well that David, Robert, and Frederick Smith do not intend to give up their executive positions at SBG, for Scripps Howard's counsel cross-examined each of the three brothers extensively on the time they spend in those roles. See, e.g., Tr. 1141-45; 1239-50; 1298-1302; 1330-42.

6. Nor does Scripps Howard's Motion raise any substantial or material question of fact as to the candor of Four Jacks' principals. As discussed above, Four Jacks' integrated principals have consistently made clear that they intend to retain their ownership interests and executive positions in SBG. Indeed, Scripps Howard entirely ignores David's, Robert's, and Frederick's direct case testimony as to how they will accommodate their Channel 2 integration pledges with their current positions in SBG.

7. The gravamen of Scripps Howard's Motion is that, in light of the statements in SBG's December SEC filings, Four Jacks' three integrated principals lied in their direct case testimony when they stated:

In the event of a grant of Four Jacks' application, to fulfill my integration commitment, I will resign from my then-current employment and will limit or terminate any other activities that might interfere with my integration commitment.

At bottom, the Motion amounts to a semantic quibble over what David, Robert, and Frederick Smith meant by the term "then-current employment" in that statement.

8. In no way does the above-quoted statement represent a commitment by David, Robert, or Frederick Smith to resign his official positions with, or dispose of his ownership interests in, SBG. David, Robert, and Frederick Smith do not work for anyone at SBG. They are owners and executives of that company. Thus, they are bosses of SBG, not employees, and they set their own hours.<sup>4/</sup> For that reason, the term "then-current employment" in their direct case testimony was never intended to encompass their ownership of or executive positions in SBG. The statement in question was meant only to convey that David, Robert, and Frederick Smith would give up any future employment that they might have at the time of the Four Jacks grant, and to make clear that they would cease their full-time presence at WBFF(TV) -- the station they have proposed to divest. It cannot be overemphasized that had David, Robert, and Frederick Smith intended to state that they would give up their ownership interests and executive positions in SBG, they would not have taken the trouble to explain -- in the immediately succeeding paragraph of their respective testimony -- how they can

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<sup>4/</sup> As Robert Smith testified at hearing: ". . . [W]e're not like a secretary who has to be there 9:00 to 5:00. We're a management team that manages stations that have professional and general managers already in place. Basically if we weren't there at all for a month, the tasks at those stations would still get done because they are managed by other people." Tr. 1246.

accommodate those roles with their proposals to manage the Channel 2 station on a full-time basis.

9. Scripps Howard's Motion provides no evidence to the contrary. At paragraph 10, pp. 7-8 of the Motion, Scripps Howard cites numerous portions of the brothers' hearing testimony in an attempt to establish that "the Four Jacks officers are now 'full-time' employees" of SBG. But in none of the cited testimony do the witnesses even mention the word "employment."

10. Aside from the statements in SBG's December SEC filings -- which merely make explicit what have been the intentions of Four Jacks' integrated principals all along -- Scripps Howard manages only to cite to two snippets of testimony in which Robert and Frederick Smith answered affirmatively to Scripps Howard counsel's leading questions as to whether David, Robert, and Frederick were "employed" at SBG (and what Robert Smith's present "employment" was). Motion at 4 & n.2. Those answers, however, were entirely correct -- in the sense that the roles of David, Robert, and Frederick Smith as owners and executive officers of SBG are what they do every day, they draw executive salaries from SBG, and right now they are present on a daily basis at SBG's Baltimore station. The testimony cited by Scripps Howard simply fails to establish any misrepresentation.<sup>5/</sup>

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<sup>5/</sup> At pages 8-9 of its Motion, Scripps Howard cites to hearing testimony in which David Smith allegedly "dissembled" as to his intentions with respect to SBG. In the cited testimony, however, David Smith was not even asked whether he would resign his official positions with SBG. Instead, he was being asked where his integration pledge in this proceeding was referenced in SBG's original S-1 Registration Statement -- by way of questions that mischaracterized Mr. Smith's  
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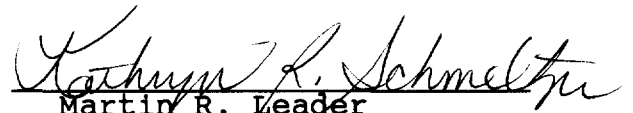
11. In sum, Four Jacks' integrated principals have consistently adhered to their integration pledges in this proceeding, and at all times have made clear that they do not intend to resign their official positions with, or dispose of their ownership interests in, SBG. Thus, Four Jacks' integrated principals have not engaged in any misrepresentation or lack of candor at all, let alone done so deliberately. See Tequesta Television, Inc., 2 FCC Rcd 7324, 7325 (Rev. Bd. 1987) ("an intent to deceive, which lies at the core of all misrepresentation-like issues, must be proven"). Accordingly, no substantial or material question of fact exists, and it goes without saying that Scripps Howard has not shown any substantial likelihood of proving its allegations. Since Scripps Howard has failed to meet any of the tests for reopening of the record, its Motion must be denied.

Respectfully submitted,

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By:

  
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Its Attorneys

Dated: December 22, 1993

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integration pledge. David Smith gave direct responses to each of the questions asked him. It is impossible to discern any deliberate misrepresentation or lack of candor in this testimony.



CERTIFICATE OF SERVICE


I, Julia L. Colish, a secretary in the law firm of Fisher, Wayland, Cooper and Leader, do hereby certify that true copies of the foregoing "OPPOSITION TO MOTION TO ENLARGE ISSUES AND TO REOPEN THE RECORD" were sent this 22nd day of December, 1993, by first class United States mail, postage prepaid, to the following:

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